

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ROBIE J. DRAKE,

Petitioner,

v.

**ORDER**  
99-CV-681S

L.A. PORTUONDO,

Respondent.

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1. On January 23, 2009, the United States Court of Appeals for the Second Circuit reversed the Court's (Elfvig, J.) denial of Petitioner's petition for writ of habeas corpus, and directed this Court to enter judgment conditionally granting Petitioner's writ of habeas corpus and ordering Petitioner's release unless the State of New York provides him a new trial within 90 days. See Drake v. Portuondo, 553 F.3d 230, 247-48 (2d Cir. 2009). The Mandate was filed on March 3, 2009. (Docket No. 74.)

2. Approximately one week before the Mandate was filed, Petitioner filed a motion seeking this Court's permission to adjourn Petitioner's new trial, which the Niagara County Court has scheduled to begin on March 23, 2009, until October 26, 2009. (Docket No. 73.) Although the State is prepared to begin on March 23, Petitioner requests additional time to prepare for trial. The State does not object to this request.

3. The Second Circuit explicitly directed the "entry of judgment conditionally granting the writ of habeas corpus and ordering Drake's release unless the State provides him a new trial within 90 days." Drake, 553 F.3d at 248. Entering judgment accordingly is all this Court is empowered to do. Any requests for extensions of time or a stay of the Second Circuit's Order must be made to the Second Circuit. See, e.g., Fed. R. App. P.

26(b) ("For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires.").

Petitioner's motion will therefore be denied.

IT HEREBY IS ORDERED, that pursuant to the Second Circuit's Mandate (Docket No. 74), Petitioner's Petition for Writ of Habeas Corpus is CONDITIONALLY GRANTED and Petitioner is ORDERED released unless the State provides him a new trial within 90 days.

FURTHER, that Petitioner's Motion seeking an extension of time (Docket No. 73) is DENIED.

FURTHER, that the Clerk of the Court is DIRECTED to enter judgment accordingly.

SO ORDERED.

Dated: March 4, 2009  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge